Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES

J. L. WILSON, ROY C. LEWELLEN,
DON TRIMBLE AND E. DION WILSON,
Counsel for the Plaintiff class represented
by the Lake View School District No. 25,
Phillips County, Arkansas, et. al.,
Petitioners

v.

MIKE HUCKABEE, Governor, et. el.
Respondents

On Petition For A Writ of Certiorari
To The Supreme Court of Arkansas

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Were the actions of the Arkansas Supreme Court, in summarily and very drastically reducing (by $6.0 million, or two-thirds in amount) the attorneys' fees awarded to these African American petitioner attorneys in this public interest class action case, so arbitrary, capricious, and so disparate (as compared to that court's approval of attorney fees awarded to Caucasian attorneys in similarly situated public interest class action cases involving public school moneys), that the Arkansas Supreme Court must be found to have (1) violated the petitioner's rights to equal protection and (2) to have flouted the guiding principles set by this Court's decisions for awarding attorneys' fees, thereby causing a denial of these African American petitioners' rights to due process (both as guaranteed by the 14th Amendment to the U. S. Constitution)?

PARTIES TO THE PROCEEDING

The parties to the proceeding before Arkansas Supreme Court are the following:

Petitioners:

J. L. Wilson,
Lake View, Arkansas

Roy C. "Bill" Lewellen
Marianna, Arkansas

Don Trimble,
Little Rock, Arkansas

E. Dion Wilson
Helena, Arkansas

Respondent:

Mike Huckabee, Governor,
State of Arkansas, et al.
as Representatives of the
State of Arkansas,
Little Rock, Arkansas

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PETITION FOR WRIT OF CERTIORARI

Petitioners, J. L. Wilson, Roy C. "Bill" Lewellen, Don Trimble and E. Dion Wilson, respectfully petition this Court to issue a writ of certiorari to review the judgment of the Supreme Court of the State of Arkansas that was entered in this case on November 21, 2002, and the denial of their Separate Petition for Rehearing on Attorneys' Fee Issues that was entered in this case on December 19, 2002.

OPINIONS BELOW

The Opinion of the Arkansas Supreme Court (Appendix 1) was rendered on November 21, 2002, and is reported at 351 Ark. 31, 91 S.W.3d 472 (Ark. 2002). The denial of the petitioner's Separate Petition for Rehearing on Attorneys' Fee Issues (Appendix 4) is not officially reported, but was entered on December 19, 2002.

The other prior decisions rendered in this case, involving the attorneys' fee issues, were the reported decision by the Arkansas Supreme Court, at 340 Ark. 481, 10 S.W.3d 892 (Ark. 2000) (Appendix 3), and the unreported decision by the trial judge of the Chancery Court of Pulaski County, Arkansas, on May 25, 2001 (Appendix 2).

JURISDICTION

The Supreme Court of Arkansas entered its judgment on November 21, 2002 and its denial of the Separate Petitions for Rehearing on Attorneys' Fee Issues on December 19, 2002. The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. §1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

These African American attorneys (who are all essentially sole practitioners, and who do not regularly practice together) banded together to represent the Lake View School District No. 25 of Phillips County, Arkansas (where the student body of some 200, the school board and the citizenry of the community are virtually all of African American descent) and filed this class action suit on August 19, 1992 in the Chancery Court of Pulaski County, Arkansas, in an effort to have the state's statutory formula for the funding of its public schools declared unconstitutional, along with other remedial relief. The petitioners asserted that the State of Arkansas was not providing adequate state funding for this, or other similarly situated property poor school districts, so that they could meet the financial and curriculum standards that had been imposed upon them by the state, in 1983. These petitioners agreed to undertake this representation on a totally contingent fee basis and to bear the costs of litigation, only after no other counsel would agree to undertake the representation of this class of property poor school districts.

This suit has resulted in three decisions of the Arkansas Supreme Court, *Tucker v. Lake View School District*, 323 Ark. 693, 917 S.W.2d 530 (Ark. 1996)(*Lake View I*); *Lake View School District v. Huckabee*, 340 Ark. 481, 10 S.W.3d 892 (Ark. 2000) (*Lake View II*); and

Lake View School District v. Huckabee, 351 Ark. 31, 91 S.W.3d 472 (Ark. 2002)(*Lake View III*). The petitioners' successful assertion of their clients' constitutional challenge has been twice upheld by the trial court and the Arkansas Supreme Court has affirmed the trial court's determination that Arkansas' public school funding formula is still unconstitutional, because it is both inadequate and it is inequitable.

1. Original Trial and Result. The initial trial was held in September of 1994, before the Honorable Anabelle Clinton Imber (then a Chancellor in the Chancery Court of Pulaski County, Arkansas, and now an elected member of the Arkansas Supreme Court). In November of 1994, Chancellor Imber entered extensive findings of facts and conclusions of law holding that the state's public school funding formula was unconstitutional. The Chancellor relied upon much of the testimony and other evidence introduced by the petitioners to sustain her determinations in this regard. However, the Chancellor stayed the effect of her decision for a period of two years. The State of Arkansas appealed her decision to the Arkansas Supreme Court, which, in *Lake View I*, determined that the state's appeal was premature, because there was no final order entered by the trial court. On remand, this case was certified as a class action in August of 1996, with approximately 40 of the 310 separate school districts in the State of Arkansas being allowed to formally intervene in this class action case. Chancellor Imber was elected to the Arkansas Supreme Court, she recused from further participation in this proceeding, and the case was reassigned to the Honorable Collins Kilgore, in early 1997.

In response to Chancellor Imber's 1994 decision in this case, the Arkansas General Assembly changed the statutory funding formula , and, at the general election in November of 1996, Amendment 74 to the State Constitution was adopted, which amendment requires all local school districts to have a minimum of 25 mills of property for maintenance and operation of their local schools.

2. Attempted Settlement. Before the scheduled February, 1998, trial, the state defendants and the petitioners attempted to settle the issues still pending in this class action suit by the submission of an Agreed Order to Chancellor Kilgore in late January of 1998. As part of this Agreed Order (¶16), it was stipulated and agreed by the parties that the legal services rendered in this case by the petitioners had caused an additional pool of money, in the amount of $65 million per year (for each of two fiscal years), to be created for the benefit of the public school district members of the plaintiff class because of added appropriations made by the General Assembly. The final determination of the award of a reasonable attorneys' fees was to be left to Chancellor Kilgore. The petitioners filed a Petition for Award of Attorneys' Fees and Reimbursement of Litigating Costs, requesting an attorneys' fee of $10.25 million (based upon a percentage of the common benefit they had created), plus reimbursement of their actual litigating costs.

All parties to this action, including the Arkansas General Assembly and the Governor, formally approved the terms of the settlement, including the agreement that at least $130 million in common economic benefit had been created for the class members by the legal services rendered in this case by the petitioners. However, the local ACLU objected to the terms of the settlement, and the Chancellor, on April 1, 1998, refused to accept and approve the settlement or enter the Agreed Order.

Chancellor Kilgore continued to be very laudatory in his praise of the successful efforts of the petitioners in their representation of the class,[1] and he agreed to hold a fairness

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1 I have got to tell you that I think the Plaintiffs' attorneys in this case, Bill Lewellen, Jimmy Wilson, Dion Wilson and Don Trimble, have performed an historic service for this State. I think they need to be paid and paid handsomely. I think they ought to name high schools after them because I can't see the gross unfairness that existed before the lawsuit began, where the poorer school districts in the State were receiving about $600 per pupil

hearing to give the parties and the public an opportunity to comment upon his initial determination that the petitioners should be awarded an attorneys' fee of at least $7.0 million. A fairness hearing was held on May 22, 1998, where substantial additional lay and expert testimony, documentary evidence and written comments from the public were introduced to establish, in part, that the state had expended an additional $130 million in *equalization funding* on public schools over two fiscal years, because of this *Lake View* case.

In response to the petitioners' fee petition, the counsel for the state defendants maintained the position that an attorneys' fee could be awarded to the petitioners in this case *only* based upon the lodestar method (not the percentage method), and *only* upon the submission by the petitioners of contemporaneously prepared time records, which were not maintained because the petitioners' solo law practices all related to contingency fee matters, and time records are not generally maintained by any of them. However, the attorneys of the Arkansas Attorney General's Office (who represented the state defendants and who opposed the fee request of the petitioners in this case) also acknowledged that they did not keep contemporaneous time records with regard to their legal services rendered to the state in this class action case.

By Final Order entered by Chancellor Kilgore on August 17, 1998, the trial judge dismissed the substantive claims of the plaintiff class as *moot*, and he declined to award the petitioners *any*

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and the richest over $6,000.

I don't see the Legislature just voluntarily coming forward and taking care of the situation. I think that it was through the efforts of the Plaintiffs that this happened, and they did it. If I can give them some money, I will . . . (Hearing, April 6, 1998).

amount as attorneys' fees or reimbursement of litigating costs, because he believed that the doctrine of sovereign immunity was applicable. However, he again praised the petitioners' services in the closing paragraph of this Final Order.[2]

3. Second Appeal. Faced with the prospect of the substantive claims of all of the property-poor school districts (that comprised the plaintiff class) lapsing, as well as their not receiving any compensation for all of the legal services that they had rendered for the prior six years, the petitioners carried an appeal of both the substantive issues and the attorneys' fee issues from the Final Order to the Arkansas Supreme Court. This appeal by the petitioners was undertaken on a totally contingent basis, and it culminated in the Arkansas Supreme Court's decision in *Lake View II*.

In *Lake View II*, the Arkansas Supreme Court determined that the substantive claims of the plaintiff class were not *moot*, the court reinstated the class action suit, and it ordered Chancellor Kilgore to hold a compliance trial, on remand, to determine if the State of Arkansas had or had not cured the constitutional deficiencies that had been found in the state's public school funding formula by the trial courts' 1994 decision. With regard to the attorneys' fee issue, in *Lake View II*, the Arkansas Supreme Court held that the State of Arkansas had waived its claim to sovereign immunity, and, therefore the petitioners were entitled to attorneys' fees from the state, based upon the substantial economic benefit that the petitioners had created for the members of the plaintiff class and the state, as a whole. The Arkansas Supreme

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2 "From the Findings of Fact entered in the 1994 Orders, it is clear that Plaintiffs and their attorneys have benefitted the public schools. They should be rewarded. It is *only* because the Court finds that the law does not allow the award of attorneys' fees or provides a method to compel the state to pay that the Court declines to do so."

Court specifically noted, in *Lake View II* (Appendix 3), the stipulated agreement of the parties that at least $130 million of additional state *equalization funding* had been created because of the petitioners' efforts on behalf of the members of the plaintiff class; and that such fact was reinforced by the statements in open court by the state's counsel. The appellate court instructed Chancellor Kilgore, on remand to determine a reasonable attorneys' fee for the petitioners and that he could consider in his discretion, either the contingent fee or lodestar basis, but that the State of Arkansas would have to bear the cost of the fee award (10 S.W.3d, at 902).

4. Compliance Hearing on Second Remand. When this case was remanded to the Chancery Court, in April of 2000, over 140 (of the remaining 270) public school districts from throughout the state (at the behest of the Arkansas Educational Administrators' Association) immediately sought to belatedly intervene in this class action case (with *all* of these school districts requesting to be aligned with the interests of the state defendants). The petitioners opposed such belated attempt at intervention, and Chancellor Kilgore denied these attempted interventions, as untimely. Also, on remand, Chancellor Kilgore immediately ruled that he would take no further testimony on the attorneys' fee issue (Appendix 12) and he ordered the petitioners to begin to keep contemporaneous time records on June 19, 2000, and he later ordered the petitioners to reconstruct the time spent by them in this case, since February of 1998, until June 18, 2000. At about this time, one of the petitioners, J. L. Wilson, was suspended from the practice of law for a period of five years by Order of the Arkansas Supreme Court.

In September of 2000, the petitioners filed an Amended and Restated Petition for Award of Attorneys' Fees and Reimbursement of Litigating Costs, wherein they requested that Chancellor Kilgore award them an attorneys' fee of at least $32.5 million, which amount represented 25% of the acknowledged amount of $130 million in common benefit that had been created

by their efforts for the members of the plaintiff class. As their authority for this request, the petitioners cited Chancellor Kilgore to attorney fee awards that had been made in over 20 other class action cases by Arkansas courts, over the previous 20 years, a number of which decisions involved public funds, public interest issues and public school funds. (See, Appendix 11.)

The compliance trial was held over a period of six weeks, from mid September through the end of October, 2000, whereat substantial additional testimony and documents were offered into evidence by the petitioners (on behalf of the plaintiff class), by some of the Intervenors' counsel, as well as by the counsel for the state defendants. Extensive briefs were filed by counsel for all parties and the substantive and attorneys' fee issues were taken under submission by the Chancellor.

On May 25, 2001, Chancellor Kilgore entered a very comprehensive Final Order (Appendix 2), wherein he found that the State of Arkansas' legislative efforts (in responding to Chancellor Imber's 1994 decision) were both inadequate and inequitable and that the state had failed to cure the unconstitutionality of its public school funding formula, based, to a great extent, on the evidence introduced by the petitioners about the deplorable conditions that still existed in the predominately African American school districts located in the Mississippi River delta of East Arkansas, where the Lake View School District is located.

With regard to the attorneys' fee issue, Chancellor Kilgore devoted a substantial part of his Final Order(Appendix 2) to a discussion of the facts of this case, the case law of this Court, other federal courts, and the Arkansas Supreme Court relating to attorney fee awards (discussing both the percentage and lodestar methods), a review of attorney fee awards by other Arkansas trial court judges, and the guiding directions of the Arkansas Supreme Court in its *Lake View II* decision. Based upon his analysis of all of

these factors, Chancellor Kilgore then adopted a hybrid method of awarding the petitioners an attorneys' fee in this case, where he awarded the petitioners the flat amount of $8.5 million (approximately 6 ½% of the $130 million minimum economic benefit created for the members of the plaintiff class by their efforts, which percentage the Chancellor noted was *very low*, but that percentage was chosen because the common benefit was so large) for what he described as the *liability phase* of the case, and he then awarded the petitioners an additional fee (based upon a rate of $150.00/hour) for 5,586.9 hours of legal services rendered by the petitioners (after February of 1998), for a total attorneys' fee award of $9,338,035.00.

5. Third Appeal. The petitioners filed the third appeal in this case to the Arkansas Supreme Court and the State defendants also filed a similar appeal, though neither notice of appeal raised *any* issue relating to the $130 million common benefit created by the petitioners' legal services. After assembling a designated record that approached 15,000 pages, and after extensive separate briefing on the substantive issues and the attorneys' fee issues by the parties, the Arkansas Supreme Court rendered its comprehensive decision in *Lake View III* (Appendix 1). In this decision, the Arkansas Supreme Court generally affirmed Chancellor Kilgore's determination that the State of Arkansas' current public school funding formula was unconstitutional, because it was both (1) inadequate in amount and (2) inequitable in its distribution. The appellate court then entered a stay of the effect of its decision, until January 1, 2004, during which time the Arkansas General Assembly is again to be given an opportunity to attempt to address and cure the constitutional deficiencies that have been found by the courts to exist in the state's public school funding.

With regard to the attorneys' fee award, the Arkansas Supreme Court held, rather summarily and without reference to any precedents, that Chancellor Kilgore had abused his discretion

in awarding the petitioners an attorneys' fee based partially upon the contingency or percentage method. This court held that decisions on attorney fee awards by Arkansas judges in other public interest class action cases were inapplicable, as precedent in this case involving "public school funding." Though the state defendants never raised the issue on appeal and they never questioned the court's prior holding that the petitioners had created a monetary benefit of at least $130 million for the members of the plaintiff class, the Arkansas Supreme Court, *sua sponte*, abandoned and disregarded this factual determination, and, instead, held that any determination of an exact monetary benefit was mere *fodder for speculation* in *Lake View III*. The Arkansas Supreme Court then acted to restrict and drastically reduce the attorneys' fee award in this case by more than $6 million (two-thirds of the entire fee award) by utilizing *only* the lodestar method, and a $150.00 per hour rate (an hourly rate that had been arbitrarily chosen by the Chancellor, without any evidentiary basis in the record in this *Lake View* case). This court did make a separate award of the reimbursement of litigating costs to the petitioners in the amount of $309,000.00.

The petitioners filed a Separate Petition for Rehearing on the Attorneys' Fee Issues (Appendix 4), asserting that the Arkansas Supreme Court had erred in several respects and requesting that the case be remanded (if their attorneys' fee award was to be based solely upon the lodestar method) for Chancellor Kilgore to determine additional fees for them for the appeal, and a proper and reasonable *current* hourly rate that should be set for their legal services, since they had filed, contemporaneously with the filing of their Separate Petition for Rehearing on Attorneys' Fee Issues, a Motion Requesting the Arkansas Supreme Court to Take Judicial Notice of Current Attorney Fee Award (Appendix 6), which had established that a district judge of the local federal court, in October of 2002, had awarded an attorneys' fee to the successful plaintiffs' attorney in an ERISA case at the rate of $225.00 per hour. The petitioners' Separate Petition for Rehearing on Attorneys' Fee Issued was summarily denied, without comment. (Appendix 5).

REASONS WHY CERTIORARI SHOULD BE GRANTED

1. The petitioners have been denied their rights to equal protection and due process of the laws, as guaranteed by the 14th Amendment to the U. S. Constitution, because of the unprecedented and unsupportable actions of the Arkansas Supreme Court in so drastically reducing the attorneys' fee award made to them by the trial court.

A. Legal Basis for Petitioners' Claims of Constitutional Deprivation. This Court must view this request for the issuance of a Writ of Certiorari by these African American petitioners as a case involving race discrimination and a suspect classification of them as attorneys, which classification has been based (as a practical matter) solely upon race, because they have been treated in such a disparate manner by the state's highest appellate court, as compared to the treatment of Caucasian attorneys where attorney fee awards were made by Arkansas judges in similar public interest class action cases (especially those other cases involving public school funds). The question for this Court to decide is whether the state court (which is required to uphold these constitutional standards when dealing with the litigants before it) is, itself, subject to these same constitutional standards and limitations on its own actions. The actions taken by the Arkansas Supreme Court in *Lake View III*, to reduce the petitioners' attorneys' fee award by two-thirds, must be subjected to appellate review by this Court under the *strict scrutiny* test, since the petitioners make up the entirety of the suspect class created by the state court. *Miller v. Johnson*, 515 U.S. 900 (1995). The judicial branch of a state government is bound by the limitations on state action set out in these two provisions of the 14th Amendment, just as are the other branches of state governments. *Shelley v. Kraemer*, 334 U.S. 1 (1948).

This Court's cases interpreting challenges to state action under the due process and equal protection clauses of the 14th Amendment overlap in their holdings. *Truax v. Corrigen*, 257 U.S. 312 (1926). Accordingly, in this case, the petitioners assert that both

of these constitutional provisions are applicable and both of them supply a basis for this Court to grant the petitioners the relief they seek. The petitioners' reliance on their due process and equal protection rights, under the 14th Amendment, were raised in their Petition to Award of Attorneys' Fees and briefs in support thereof, that were filed in both the trial court and in the Arkansas Supreme Court, though the Arkansas Supreme Court never addressed these federal constitutional claims.

B. History of Race Based Discrimination in Arkansas. The Court cannot consider the petitioners' claims of racial discrimination in the factual vacuum of the record in this case, alone, without having a full understanding of the tortured history of racial discrimination and intimidation by the State of Arkansas against its African American citizens. Within the last 85 years (following the *night rider era* that occurred after the end of the Civil War), there have been numerous instances of overt racial discrimination against, and intimidation of, African Americans in Arkansas; which actions have been sanctioned by the state. All of these instances provide a proper historical background and perspective that is relevant and material to the petitioners' claims of racial discrimination in this appeal.

Public lynchings of blacks were common in Arkansas during the first third of the 20th Century, with some lynchings occurring in Phillips County, Arkansas, as late as 1946. The horrific race riots at Elaine, Arkansas, occurred in 1919 (less than 10 miles from the spot where the Lake View school is located), where untold numbers of African American citizens were killed or seriously injured when attacked by mobs of whites, which mobs included local law enforcement officials. However, as a result of this mayhem, *only* African American citizens were formally charged with having committed crimes by the State of Arkansas. Those charged were held and tortured in prisons for nearly four

years, until the murder charges were ultimately ordered dismissed when the state's witnesses recanted their stories.[3]

In response to this Court's 1954 decision in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), Amendment 44 to the State Constitution, entitled *Protection of States' Right*, was adopted by way of an initiated petition drive and the majority vote of the citizens of the State of Arkansas in the general election on November 6, 1956. Amendment 44 was directed solely at authorizing official state action to oppose the effect of this Court's decision in *Brown v. Board of Education of Topeka*. [4]

International attention was drawn to Little Rock, Arkansas, in 1957, when then Governor Orval Faubus activated the Arkansas National Guard in an attempt to bar nine African American students from being admitted to Central High School, which act led to federal troops being sent to Little Rock (for upwards of a year) to enforce the orders of the federal court to desegregate the public schools of this community. [5]

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[3] *See. Banks v. State*, 143 Ark. 154. 219 S.W. 1015 (Ark. 1920); *Ware v. State*. 146 Ark. 321. 225 S.W. 626 (Ark. 1920); and *Ware v. State*. 159 Ark. 540. 252 S.W. 934 (1923). *See* also, Stockley. *Blood in Their Eyes, the Elaine Race Massacres of 1919* (University of Arkansas Press. 2001).

[4] These provisions of Amendment 44 to the state constitution were upheld by the Arkansas Supreme Court in the case of *Garrett v. Faubus*, 230 Ark. 445, 323 S.W.2d 877 (Ark. 1959). The effect of this decision by the Arkansas Supreme Court was enjoined by the decisions of federal district court in *Aaron v. McKinley*. 173 F. Supp. 944 (E.D. Ark., 1954) *affirmed. Faubus v. Aaron*, 361 U.S. 197 (1959). The provisions of Amendment 44 to the state constitution were held to have been *void ab initio*, by the federal district court in the case of *Dietz v. Arkansas*. 709 F. Supp. 902 (E.D. Ark. 1989). Finally, in 1990, Amendment 44 to the state constitution was formally repealed by the adoption of Amendment 69 to the state constitution by the majority vote in the general election held on November 6. 1990.

In 1983, the Little Rock School District filed suit in the federal district court against the other two public school districts located within Pulaski County, Arkansas, as well as the State of Arkansas, alleging that the Little Rock School District was being resegregated, because of the actions of these other government defendants. This cause of action was upheld by the federal court and a series of inter-district transfer remedies and district boundary changes were adopted by the federal courts to address the issues raised by the Little Rock School District. Eventually, the State of Arkansas was ordered to contribute nearly $100 million in additional funding (over and above its normal and proportionate funding of public school in the State of Arkansas) to address problems caused for the Little Rock School District by the segregationist policies of the state.[6]

Of the utmost pertinence and relevance to the claims of current racial discrimination asserted by the petitioners in this case is the situation that has contemporaneously arisen involving the Honorable Wendell L. Griffin, a sitting judge of the Arkansas Court of Appeals. Judge Griffin, a native Arkansan of African American descent, holds both an undergraduate and a law degree from the University of Arkansas at Fayetteville, Arkansas, and he has served on the University's Alumni Association's Board of Directors. Judge Griffin was publicly disciplined by Arkansas Judicial and Disabilities Commission (on November 20, 2002, the day before the *Lake View III* decision was rendered), simply because he appeared, as an invited guest, at a meeting of the Arkansas Black Legislative

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[5] There is an excellent historical summary of the State of Arkansas' role in the segregation of its public schools set forth in the Eighth Circuit's Opinion in *Little Rock School District v. Pulaski County Special School District No. 1*, 778 F.2d 404, 411-417 (C.A. 8. 1985).

[6] *See, Little Rock School District v. Pulaski County Special School District No. 1*, 597 F. Supp. 1220 (E.D. Ark. 1984), *affirmed* 778 F.2d 404 (C.A. 8. 1985), *cert. denied*, 476 U.S. 1186 (1986).

Caucus, on March 18, 2002, where he publicly criticized the University of Arkansas' administration for its failure to recruit and retain African American students, or to recruit, retain, promote and mentor African American faculty members and administrators.

In April 2002, the Arkansas Judicial Discipline and Disability Commission received a detailed *anonymous complaint* from "a concerned citizen" complaining about Judge Griffen's statements before members of the Black Legislative Caucus and asserting this judge had violated certain of the Canons of Judicial Ethics by his statements on that occasion. The Commission and its executive director opened an investigation based solely upon this *anonymous complaint;* they refused to identify the complaining party (in response to requests by Judge Griffen and his counsel); they held several hearings on the substance of this *anonymous complaint,* and, on November 20, 2002, the Commission formally disciplined Judge Griffen by publically issuing a letter of admonishment (based upon a 4 to 3 vote of the Commission members, which votes of which members the executive director of the Commission has refused to divulge, publicly). What is so vitally important and relevant to the petitioners' claims of racial discrimination taken against them by the Arkansas Supreme Court in *Lake View III* (in so drastically reducing the attorneys fee awarded to them in this case), is that Judge Griffen , who could have appealed the Commission's disciplinary action to the Arkansas Supreme Court for some limited review, deliberately chose *not* to appeal the disciplinary action of the Commission to the members of the Arkansas Supreme Court for review. Instead, Judge Griffen has chosen to file an action for declaratory judgment and an injunction against the Arkansas Judicial Discipline and Disabilities Commission, its executive director, and its members, individually, in the United States District Court for the Eastern District of Arkansas.[7]

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[7] *See* the pending case of *Griffen v. The Arkansas Judicial Discipline and Disabilities Commission, et al.*, U.S.D.C., E.D. Ark., Docket No. 4-02-CV-00770-GH.

Therefore, the petitioners submit that, at the very least, the vestiges of official though latent, racial discrimination still exist in Arkansas, and that such racially based discrimination still adversely affects all African American citizens of this state, even the elected judges of the state's appellate court who are of African American descent.

C. State Action Against Some of the Petitioners Involved. J. L. Wilson, a graduate of, and still a patron of, the Lake View School District, was the African American attorney who originated the planning and implementation of this constitutional challenge on behalf of the Lake View School District. Mr. Wilson is now serving a five-year suspension from the practice of law imposed upon him by the Arkansas Supreme Court's opinion, in the case of *Wilson v. Neal*, 341 Ark. 282, 16 S.W.3d 228 (Ark. 2000), *cert. denied*, 532 U.S. 919 (2001). Mr. Wilson's suspension from the practice of law by the Arkansas Supreme Court was the culmination of a unique and combative 10 year defense by this African American attorney against an attempt by the Arkansas Supreme Court's Committee on Professional Conduct (another disciplinary arm of the Arkansas Supreme Court) to seek his permanent disbarment.[8]

As a result of the disbarment proceedings initiated against Mr. Wilson by the Arkansas Supreme Court's Committee on Professional Conduct, Mr. Wilson eventually filed suit against five of the seven sitting Justices of the Arkansas Supreme Court in a

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[8] *Neal v. Wilson*, 316 Ark. 588, 873 S.W.2d 552 (Ark. 1994); *Neal v. Wilson*, 321 Ark. 70, 900 S.W.2d 177 (Ark. 1995); *Wilson v. Neal, 327 Ark. 783, 939 S.W.2d 312 (Ark. 1997);* Wilson v. Neal, *329 Ark. 125, 947 S.W.2d 288 (Ark. 1998);* and *Wilson v. Neal*, 332 Ark. 148, 964 S.W.2d 199 (Ark. 1998).

federal court *civil rights action*.[9] Although J. L. Wilson received a Presidential pardon from former President Clinton, in January of 2001, he is still barred from admission to the bar of the United States District Court for the Eastern District of Arkansas,[10] and he is now still serving the balance of his five-year suspension from the practice of law before the Arkansas Supreme Court.[11]

Also, petitioner Roy C. "Bill" Lewellen, an African American native of Marianna, Lee County, Arkansas, was subjected to formal state criminal charges shortly after he announced, in 1985,that he intended to run for the Arkansas State Senate against a longtime white incumbent. The local state prosecuting attorney filed felony criminal charges against Mr. Lewellen in the Circuit Court of Lee County, Arkansas,[12] charging him with allegedly attempting to bribe a witness. In response to this state filed criminal action, Mr. Lewellen filed suit against the state prosecutor in the United States District Court for the Eastern District of Arkansas, seeking an injunction by the federal court to quash his criminal prosecution by the state. Eventually, the federal

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[9] *See, Neal v. Wilson*. 920 F.Supp. 976 (E.D.Ark. 1996), *affirmed*. 112 F.3d 351 (C.A.8. 1997)

[10] *See, In re Wilson*, 47 Fed. Apps. 782, 2002 W.L. 31102579 (C.A.8. 2002).

[11] Mr. Wilson's request for a stay of this suspension, to allow him to continue to participate in the representation of the plaintiff class in this on-going *Lake View* case, was denied by the Arkansas Supreme Court in September of 2000. Therefore, the primary counsel for the school district representing the plaintiff class in this *Lake View* case was effectively removed from further participation in this case by the action of the Arkansas Supreme Court at a critical stage when the substantive causes of action had been reinstated by this state appellate court's *Lake View II* decision, and the compliance trial ordered, on remand, was about to begin.

[12] *See, State of Arkansas v. Roy C. Lewellen*. Circuit Court of Lee County, Arkansas. Docket No. 85-50.

district court ordered the extraordinary remedy of requiring this state criminal proceeding to be dismissed, as an abuse of the prosecutor's discretion, and such determination by the federal district judge was upheld by the U. S. Eighth Circuit Court of Appeals.[13]

Both J. L. Wilson and Bill Lewellen were subsequently elected, respectively, to the Arkansas House of Representatives and the Arkansas Senate, where they served during period of the pendency of this *Lake View* case, until forced from office by the effect of Arkansas' "term limits" amendment to the state constitution.

D. Motions for Disqualification or Recusal. Prior to the submission of their appeals to the Arkansas Supreme Court in this *Lake View* case (both in 1999, and again in 2002), the petitioners filed formal Motions for Recusal or Disqualification of Elected or Appointed Justices (Appendix 7), with regard to the sitting Justices of the Arkansas Supreme Court who had been named as defendants by J. L. Wilson in his *civil rights* case brought against the members of the Arkansas Supreme Court in the federal district court, during his disciplinary proceeding, and also because the now sitting Chief Justice of the Arkansas Supreme Court, W. H. "Dub" Arnold (then an elected prosecuting attorney for the state), had served as an expert witness for the State of Arkansas (as part of the state's defense in the federal court case brought by Mr. Lewellen), where he testified that he too would have criminally charged Mr. Lewellen, under the same facts.

In addition, the petitioners twice requested the disqualification and recusal of Special Justice Carol Dalby of Texarkana, Arkansas (Appendices 7 and 9), a attorney licensed by the Arkansas Supreme Court, but who is employed as a deputy district attorney by Bowie County, Texas. Special Justice Dalby

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[13] *See, Lewellen v. Raff*, 649 F.Supp 1229 (E.D.Ark. 1986), *affirmed*, 843 F.2d 1103 (C.A. 8 1988), *cert. denied*, 489 U.S. 1033 (1989).

was appointed twice in this *Lake View* case (to replace Associate Justice Anabelle Clinton-Imber, who has continued to recuse from participating in any appeal in this *Lake View* case) by Governor Mike Huckabee, the lead defendant in this class action case, under the provisions of Article 7, § 9 of the Arkansas State Constitution. Special Justice Dalby had previously been a member of the congregation where Governor Huckabee was formerly the Baptist minister (so she and the lead defendant in this case had a formal relationship as pastor and penitent) and it was also established that Special Justice Dalby had made campaign contributions to Governor Huckabee on several occasions. Both of these Motions for Disqualification or Recusal were denied by the Arkansas Supreme Court. (Appendix 8 and Appendix 10).

E. Lack of African American Jurist. It must also be noted by the members of this Court that the Arkansas Supreme Court's decision in *Lake View I* was authored by Associate Justice Andree Roaf (an African American attorney who had been appointed to fill an unexpired vacancy on the Arkansas Supreme Court by Governor Jim Guy Tucker, and who now serves as an elected member of the Arkansas Court of Appeals). In the *Lake View II* decision, Associate Justice Lavenski R. Smith (an African American attorney who was appointed by Governor Mike Huckabee to fill and unexpired term on this appellate court, and who now sits as a judge of the U. S. Court of Appeals for the Eighth Circuit) participated and authored a concurring opinion. These petitioners assert that, in the rendering of its decision in *Lake View III*, this Court must be note that there was a total absence of any African American jurist on the Arkansas Supreme Court, and that there was a decidedly different and harsher tone directed at them in the Arkansas Supreme Court's decisions in *Lake View III*, as opposed to that Court's decisions in *Lake View I and Lake View II*. In its decision in *Lake View III*, the Arkansas Supreme Court repeatedly stated strong criticism of the petitioners' legal scholarship and abilities, even though these petitioners have twice prevailed in this case against all of the arrayed legal talents of the State of Arkansas. In addition, in *Lake View III*, Associate Justice Corbin went out of his

way to write a concurring opinion that castigates the petitioners for allegedly raising issues of race in this appeal, and he branded the petitioners' conduct in this regard as reprehensible. Except for the source of such remarks, one would almost consider these remarks racial stereotyping, a practice that previously was so open and prevalent in Arkansas.

The petitioners respectfully request that the members of this Court will consider all of these matters, as the appropriate factual setting to their claims of denial of equal protection and due process, because of the actions taken by the Arkansas Supreme Court in this class action case, in November of 2002, to so arbitrarily and capriciously reduce the amount of the attorneys' fee awarded to these African American attorneys by the trial judge in this case.

2. The petitioners' rights to enjoy the equal protection of the laws, pursuant to the 14th Amendment of the U. S. Constitution, have been denied to them by the actions of the Arkansas Supreme Court in drastically reducing the amount of their attorneys' fee award, when compared to fee awards approved by this court for Caucasian counsel in similar class action cases.

Since the discriminatory action complained of by the petitioners was taken by the highest appellate court of the state, the petitioners have *only* this Court of last resort to look to for relief. The action of the Arkansas Supreme Court in drastically reducing the attorneys' fee awarded to the petitioners by the trial court judge constitutes state action for purposes of the equal protection clause of the 14th Amendment. (*See, Shelley & Kraemer, supra.*) Therefore, this Court must consider this as a claim of denial of equal protection, based upon racial discrimination.

A. Attorney Fee Awards to Caucasian Attorneys in Class Actions. The *Lake View* case is one of 24 class action or derivative cases in which attorneys' fees have been awarded to successful counsel by state and federal courts in Arkansas, in the last 25 years (Appendix 11). However, this *Lake View* case is the *only* case, of all of these cases, in which the counsel for the successful plaintiffs were of African American descent. In *all* of the other 23 cases, the counsel for the successful litigants were Caucasian, and in each such instance, the Arkansas courts awarded attorneys' fees to the plaintiffs' counsel based upon a percentage of the common fund/common benefit created by the successful counsel. In *none* of these other cases has the attorneys' fee award to these Caucasian counsel been based upon the lodestar method. The percentage of the common fund/common benefit that the attorneys' fee award represented in these Arkansas class action cases ranged from between 10% and 35.5% of the created fund or benefit, with the percentage generally being between 25% and 35% in 12 of the other 23 cases. The amount of the common fund/common benefits created in those cases ranged from $23,000.00 to $93.5 million. A large number of these class action cases were ones that involved public interest challenges over public funds, including four cases that dealt with funds of, or for, the public schools of the State of Arkansas. Chancellor Kilgore, in awarding the petitioners a partial attorneys' fee of $8.5 million (6 ½ % of the *minimum* $130 million common benefit created by the petitioners in their rendering of legal services in this *Lake View* case), stated that he realized that the percentage he used was *very low*, but he chose that percentage because he found that the $130 million common benefit was very large in amount.

However, Chancellor Kilgore, in 2000, in the remand of the case of *Barclay v. Melton*, 339 Ark. 362, 5 S.W.3d 457 Ark. 1999 (Appendix 11), awarded an attorneys' fee to the Caucasian attorney representing the challenging taxpayers that was equal to 33 1/3% of a common fund of $1.6 million in state income tax surcharges that were unconstitutionally imposed, as a substitute for local school property taxes. (Appendix 11) The *Melton* case

originated as a challenge to one of the statutory remedies enacted by the Arkansas General Assembly in response to the 1994 decision in this *Lake View* case, and this *Melton* case was actually consolidated with the *Lake View* case for a time. In addition, in the 1994 case of *Lakeside School District v. Arkansas State Board of Education* (Appendix 11), a case involving the claims of a number of Arkansas' school districts against the State Department of Education that alleged that the state had under funded its support for these schools for years, an amount of $4.85 million was recovered by Caucasian attorneys for their school district clients. One of these attorneys was then a member of the Arkansas House of Representatives and is now a sitting Circuit Judge. These Caucasian attorneys were awarded 15% of the common fund, or an attorneys' fee of $726,914.00, for less than a year's legal services. It must be noted that the State of Arkansas (through the same counsel who have been the counsel for the state defendants in this *Lake View* case), consciously chose *not* to appeal those attorney fee awards in either the *Melton* or *Lakeside School District* cases, but the state and its counsel *did appeal* the attorney fee award made to these African American petitioners in this *Lake View* case.

The most glaring example of disparate treatment by the Arkansas Supreme Court (between African American and Caucasian counsel) in class action challenges involving public school funds is the dramatic difference (1) in the Arkansas Supreme Court's arbitrary and capricious actions of drastically reducing the petitioners' attorneys' fee award by $6.0 million in this *Lake View* case (by requiring the use of the lodestar basis, only, because this case involved public moneys used for school funding), and then, (2) two and a half months later, in the case of *Butt v. Evans Law Firm*, P.A., 351 Ark. 566, ___ S.W.3d ___ (Ark. 2003), this same appellate court has approved the trial court's awarding of an attorneys' fee to the Caucasian counsel based upon 25% of the common fund created by them in a successful challenge of the legality of a local property tax (the overwhelming use of which was for *the funding of public school districts* in Washington County, Arkansas). The petitioners submit that the only real difference between these two cases is the color of the skin of the attorneys for

the successful plaintiffs. Therefore, the petitioners submit that Arkansas Supreme Court's creation of a "supposed" classification of cases involving "public school funds," as a reason to hold that the trial court judge abused his discretion by awarding the attorneys' fee based partially upon percentage of the minimum $130 million common benefit created for the members of the plaintiff class, is an erroneous and disingenuous determination by that appellate court that violates their rights to equal protection and treats them as *second class attorneys*.

B. Creation of Minimum Common Benefit Uncontroverted. In all fairness to these petitioners, it must be noted by the members of this Court that Arkansas Supreme Court, itself, in decisions entered subsequent to *Lake View II*, has held several times that these petitioners created a $130 million common fund/common benefit in this *Lake View* case. *See, Milberg, Weiss, Bershad, Hynes & Lerach, LLP v. State*, 342 Ark. 303, 28 S.W.3d 842, 854, (Ark. 2000) (where the court held "by way of legislation, the state subsequently attempted to solve those inequities. The result was the creation of a fund of $130 million"); and *Fox v. AAA U-Rent It*, 341 Ark. 483, 17 S.W.3d, 481, 486 (Ark. 2000) (where this court held "in *Lake View*, the state waived sovereign immunity, acknowledged that a substantial benefit in a fixed dollar amount had accrued to the state due to the attorneys efforts . . .). The $130 million common benefit created for the members of the plaintiff class by the efforts of the petitioners was agreed and stipulated to by the state defendants, and this *fact* was never questioned by these state defendants or mentioned as an issue in their notice of appeal or briefs filed in *Lake View III*. This amount of $130 million became a proven fact in this case and petitioners submit that such finding is covered by the law of the case doctrine. This $130 million amount was clearly established as the *minimum* economic benefit created by the petitioners for the public school district members of the plaintiff class, even it does not represent *all* of the economic benefit created by them for the class members, it is, at least, a minimum dollar measurement of this common benefit.

Therefore the petitioners submit, that under the strict scrutiny standards of an equal protection analysis, the Arkansas Supreme Court cannot, *sua sponte*, abandon and disregard this uncontested fact in the court's appellate review of the attorneys' fee award in this case by merely stating (in *Lake View III*) that this amount is not a measure of the economic benefit created for the class members by the petitioners' efforts because the economic benefit "is virtually impossible to fix precisely" and "what [the] exact benefit might be as fodder for speculation." The petitioners assert that the Arkansas Supreme Court's raising of this issue on its own motion, and blatantly abandoning this well established and uncontested fact (as a basis for refusing to affirm the trial court's attorneys' fee award, based on its use of the percentage method), is an example of extreme judicial activism, or a result oriented decision, either of which has denied these African American attorneys their right to the equal protection of the laws.

The disparity of treatment of these African American petitioners is further exemplified by comparing the attorneys' fee finally awarded to them in this *Lake View* case to the attorneys' fee awarded to the successful in the comparable public school funding challenge brought in the State of Alabama, which is reported as *James v. Alabama Coalition for Equity, Inc.*, 713 So. 2d 937 (Ala. 1997), where the Alabama Supreme Court affirmed an award of an interim attorneys' fee to the successful attorneys in the amount of $3.6 million (using the lodestar method)(though three members of that state Supreme Court dissented, stating that the attorneys' fee should have been computed using the percentage method) for a little over three years' worth of legal services by these attorneys. Here, the petitioners have provided legal services to their clients for upwards of 13 years (more than 10 ½ years of which they have been in court) and they have not yet received $1.00 in compensation. Also, in school desegregation cases in the federal courts of Alabama (which represents litigation that is comparable to the complex issues in this case), counsel for the successful

plaintiffs were awarded fees on a lodestar basis at rates ranging from $225.00 to $275.00 per hour by the federal courts in decisions rendered anywhere from eight to ten years ago. *See, Knight v. State of Alabama*, 824 F. Supp. 1029 (N.D. Ala. 1993) and *Lee v. Randolph County Board of Education*, 885 F. Supp. 1526 (N.D. Ala. 1995).

C.. Court's Mention of Racial Issues. Finally, in this case, Associate Justice Corbin felt compelled to author a concurring opinion in *Lake View III*, in which he criticized and chastised the petitioners, and called their behavior reprehensible, for allegedly inserting the issue of race into this *Lake View* case, when Justice Corbin asserted there was no issue of race presented or considered in *Lake View III*. The petitioners submit that if a member of the Arkansas Supreme Court felt compelled to write a concurring opinion, to mention them and the issue of race in this case, it is evident that the members of such appellate court had to have made some consideration of the race of the petitioners in the rendering their decision in this *Lake View III* case.

Also, it must be pointed out that that issue of race was first injected into this case by the state defendants, *not* by the petitioners. In a brief filed in the *Lake View II* appeal (which brief was approved by former Attorney General (now U. S. Senator) Mark Pryor), the state referred to this as a "tar baby case." Petitioners submit that the insensitivity of the state's counsel in using this simile, which is recognized as a synonym for *nigger* in all of the African American communities of this state, is proof of the general insensitivity and latent racism that still is alive and operating within the everyday social fabric of Arkansas, even today.

Accordingly, the petitioners submit to this Court that their rights to equal protection, under the 14th Amendment, have been violated by this state court's creation of a suspect classification (upon which their attorneys' fee award has been so drastically

reduced in this case), because such classification (in its practical application) was only a discrimination effect based on race, since Caucasian attorneys in similar class action cases involving public school funding were awarded percentage based attorneys' fees approved by the same court.

3. **The actions taken by the Arkansas Supreme Court, to so drastically reduce the amount of the attorneys' fee awarded to the petitioners by the trial court, are actions that are part of a pattern of actions taken recently by the Arkansas Supreme Court that directly conflict with this Court's guiding decisions on the due process of the laws, as guaranteed by the 14th Amendment of the U. S. Constitution.**

The petitioners submit that the actions taken by the Arkansas Supreme Court (to so drastically reduce the amount of their fee award in this *Lake View III* case) are but one example of the judicial actions recently taken by this appellate court in what appears to be an anti public interest bias against: (1) those who would challenge illegal or unconstitutional government actions and (2) those attorneys who represent these citizens in such public interest litigation. These recent decisions of the Arkansas Supreme Court (in this vitally important area of the law) has cast a *chilling effect* upon competent counsel who would seek to represent the public's interest against governmental interests in Arkansas. Therefore, the petitioners assert that this Court should grant their Petition for Writ of Certiorari on due process grounds, alone, under the provisions of Rule 10(c) of this Court's Rules, because the Arkansas Supreme Court has begun rendering a series of decisions (in the area of public interest litigation) that directly conflict with the guiding principles on these issues of federal due process previously decided by this Court, and, if such trend continues unchecked, a far greater number of this state's citizens will be denied the federally guaranteed constitutional rights by the State of Arkansas.

This Court has long recognized that the actions of counsel in class action cases, especially those involving public interest litigation, are to be encouraged to protect the interest of the public against government oppression. *See, Hensley v. Eckerhart*, 461 U.S. 421 (1983); *Deposit Guaranty National Bank v. Roper*, 445 U.S. 326 (1980); *Boeing Company v. Van Gemert*, 444 U.S. 472 (1980); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *Sprague v. Ticonic Bank*, 307 U.S. 161 (1939); *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116 (1885); and *Trustees v. Greenough*, 105 U.S. 527 (1881) . The Arkansas Supreme Court, more than 20 years ago, established the same rationale for the awarding of attorneys' fees on a percentage basis in the public interest class action case of *Powell v. Henry*, 264 Ark. 484, 592 S.W.2d 107 (Ark., 1980). However. the petitioners submit that such controlling precedents and objectives have apparently been abandoned by the Arkansas Supreme Court, because (in a series of recently decided public interest class action cases) this court, in the awarding of attorneys' fee to the successful counsel for the challenging taxpayers, has flouted this Court's supervising guidelines on these due process matters, by rendering a series of decisions that will actually favor and encourage the governmental entities (that are the *wrongdoers)* and will discourage citizens and their counsel from challenging questionable governmental actions.

A. Common Benefit Rule. In the Arkansas Supreme Court's decision in this *Lake View* action case, as well as that court's decision in *Fox v. AAA Rent-It, supra*, the court has recognized this Court's admonition that an attorneys' fee award should be imposed upon the entity or entities receiving the common benefit. *Sprague v. Ticonic Bank, supra,* and *Mills v. Electric Auto-Lite, supra.* In its decision in *Fox v. AAA U-Rent It* (17 S.W.3d, at 487), where the attorney had secured refunds of illegally imposed income taxes for over 500 corporation (which corporations had been part of a decertified class of taxpayers represented by the attorney), this state appellate court, after recognizing and discussing the common benefit holding of this Court in *Sprague*, held:

> "We simply disagree with the *Sprague* rationale and further disagree that the decision is precedent for cases as the one now before us . . . We decline to approve attorneys' fees, under the *Sprague* reasoning where a class action is not involved, where no attorney-client relationship has been cemented with subsequent claimants, and where the sole basis for claiming the fee is *stare decisis.*"

Both the rationale of, and the holding of, the Arkansas Supreme Court in *Fox,* on this specific point, are in direct conflict with this Court's longstanding due process directives for the awarding of attorneys' fees to counsel that have created a common benefit for an identifiable class.

B. Measure of Common Fund. In *Boeing Company v. Van Gemert, supra,* this Court held that the measure of the common fund against which the percentage was to be applied to determine a reasonable attorneys' fee was the entirety of the recoverable amounts, *not* just the actual amounts claimed or refunded. In the Arkansas Supreme Court's very recent decision in *Butt v. Evans Law Firm, P.A., supra,* the Arkansas appellate court again recognized this Court's directives, on this specific matter, but stated that - -

> the United State Supreme Court's decision in *Boeing v. Van Gemert,* . . . [is] not binding precedent on this court, but there was no statute, such as §26-35-902, that was interpreted by the Court in that case.[14]

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[17] There was a very strong dissent on this *Boeing* issue by two justices of the court in this *Butt v. Evans Law Firm, P.A.* case. both stating that the Arkansas Supreme Court was bound by the precedential decision of this Court in *Boeing,* with regard to the determination of the size of the common fund created in the class action case.

The Arkansas Supreme Court's precedent setting decision to limit the attorneys' fee award in a successful class action case to only a percentage of the amounts of illegal taxes *actually refunded*, not the total amount of taxes *illegally imposed*, will not be a decision that acts as a deterrent to the state or local governments in Arkansas that would seek to impose any tax that may be of questionable validity, since the government will always reap the benefit of *all* non refunded illegal taxes, and the counsel for the challenging taxpayers will have to wait years to be compensated from whatever may be a relatively small common fund.

C. Current Hourly Rate Should be Used. Further, if the petitioners are to be awarded an attorneys' fee only under the lodestar method, the petitioner's assert that the Arkansas Supreme Court has denied these petitioners the guarantees of due process of the laws, because that court has arbitrarily limited the fee award to the amount of $150.00 per hour, when there is absolutely no evidentiary record in this *Lake View* case that $150.00 per hour is a reasonable hourly rate for counsel in Arkansas with the experience of the petitioners and there is evidence (Appendix 6) that substantially higher hourly rates are now awarded by Arkansas courts for legal services rendered in similar complex cases. Also, the petitioners have been awarded no attorneys' fee for the appeal in *Lake View III*. Both of these actions by the Arkansas court have denied them their rights to due process under the 14th Amendment.

Unless this Court reviews and reverses the Arkansas Supreme Court's arbitrary and discriminatory actions in so drastically reducing and limiting these African American petitioners' attorneys' fee award in this public interest class action case, then no property poor school district in Arkansas will ever again be able to find competent counsel to represent them and to enforce their constitutional rights (as the petitioners here so acted on behalf of all of the property poor school districts of Arkansas for 13 years in this *Lake View* case, and have prevailed at every turn, but they remain without *any* compensation for their legal services).

CONCLUSION

For all of the above stated reasons, the petitioners pray that this Court will grant their Petition for Writ of Certiorari, and will issue such Writ to the Arkansas Supreme Court, so as to review and reverse the decision by the state appellate court regarding the attorneys' fee award made to them in this *Lake View III* decision (that has so adversely affected their rights to equal protection and due process, as guaranteed by the 14th Amendment of the U. S. Constitution) and to order an increased attorneys' fee award that is at lease equal to the fee award originally made to the petitioners by the trial court in this class action public interest case.

Respectfully submitted,

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